

No. 22-166

IN THE
Supreme Court of the United States

GERALDINE TYLER, on behalf of
herself and all others similarly situated,

PETITIONER,

v.

HENNEPIN COUNTY and DANIEL P. ROGAN,
Auditor-Treasurer, in his official capacity,

RESPONDENTS.

*On Writ of Certiorari to the
U.S. Court of Appeals for the Eighth Circuit*

**BRIEF OF THE LIBERTY JUSTICE CENTER AS
AMICUS CURIAE IN SUPPORT OF PETITIONER**

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INTEREST OF THE AMICUS CURIAE¹

The Liberty Justice Center is a nonprofit, nonpartisan, public-interest litigation firm that seeks to protect economic liberty, private property rights, free speech, and other fundamental rights. The Liberty Justice Center pursues its goals through strategic, precedent-setting litigation to revitalize constitutional restraints on government power and protections for individual rights.

The Liberty Justice Center has represented citizens in property-rights cases in the past. It therefore has an interest in ensuring that this Court continues its tradition of upholding and protecting citizens' Eighth Amendment rights.

SUMMARY OF ARGUMENT & INTRODUCTION

This case requires nothing more than a straightforward application of the Court's Eighth Amendment jurisprudence. The Eighth Amendment is applicable because Minnesota's forfeiture scheme is not wholly remedial and allows the government to extract and retain sale proceeds that are partially punitive as a "fine." Part of the scheme's purpose is to deter unpaid property taxes. Here, the government extracted and retained sale proceeds of the whole value of a \$40,000 condominium to compensate for unpaid property taxes, penalties, interest, and collection costs totaling \$15,000 that Tyler owed. Keeping the balance of

¹ Rule 37 statement: No counsel for any party authored any part of this brief, and no person or entity other than Amicus funded its preparation or submission.

\$25,000 is an excessive fine prohibited by the Eighth Amendment.

The Eighth Circuit should be reversed.

ARGUMENT

The government extracted some sale proceeds as a fine to punish Tyler when it sold her home in violation of the Eighth Amendment’s prohibition against Excessive Fines.

Our British forebears put great stock in the prohibition of excessive fines. This legal tradition stretches all the way back to Magna Carta, which required that “the amount of the [fine] be proportioned to the wrong” and “not be so large as to deprive [the offender] of his livelihood.” *Browning-Ferris Indus. v. Kelco Disposal*, 492 U.S. 257, 271 (1989). And after the infamous abuses of the Stuart kings,² the English Bill of Rights reaffirmed that “excessive Baile ought not to be required nor excessive Fines imposed nor cruell and unusall Punishments inflicted.” English Bill of Rights 1 W. & M., 2d sess., c. 2.³

Following that tradition, the American legal system has also protected citizens against excessive fines and has made it clear that the Eighth Amendment applies to the States. *See Hall v. Florida*, 134 S. Ct. 1986,

² *See, e.g.*, The Grand Remonstrance ¶¶ 17, 34 (1641), in *The Constitutional Documents of the Puritan Revolution 1625-1660*, 210, 212 (S. Gardiner ed., 3d ed. rev. 1906); *Browning-Ferris*, 492 U.S. at 267.

³ *Available at* https://press-pubs.uchicago.edu/founders/documents/bill_of_rightss1.html.

1992 (2014); *Cooper Indus. v. Leatherman Tool Grp.*, 532 U.S. 424, 433-34 (2001); *Kennedy v. Louisiana*, 554 U.S. 407, 412, 419 (2008). There can be no doubt that the Excess Fines Clause is incorporated against the States, being both “fundamental to our scheme of ordered liberty” and “deeply rooted in this Nation’s history and tradition.” *Timbs v. Indiana*, 139 S. Ct. 682, 687 (2019), quoting *McDonald v. Chicago*, 561 U.S. 742, 767 (2010). And here, as there, we see abuses against this right. *Timbs*, 139 S. Ct. at 688-89 (Black Codes in the post-bellum South).

Aside from the dramatic forms of abuse employed by the British monarchs and the Southern States, there is a second, more insidious form of abuse that the prohibition on excessive fines guards against. It makes sense to “scrutinize governmental action more closely” where, as here, “the State stands to benefit.” *Harmelin v. Mich.*, 501 U.S. 957, 978 n.9 (1991) (opinion of Scalia, J.). Whereas other methods of punishment cost the State money, “fines are a source of revenue.” *Id.* In short, “[t]here is good reason to be concerned that fines, uniquely of all punishments, will be imposed in a measure out of accord with the penal goals of retribution and deterrence.” *Id.* This Court has held that such a concern is “scarcely hypothetical.” *Timbs*, 139 S. Ct. at 689.

To determine if the Eighth Amendment’s Excessive Fines Clause applies, courts typically look to see if the government scheme is wholly remedial or if it extracts monies or payments in kind that are retributive and deterrent, imposed as a punishment. *See United States v. Ward*, 448 U.S. 242, 254 (1980).

Minnesota's forfeiture scheme is not wholly remedial and fails to cabin extraction of payments to only those damages sustained by society or to the cost of enforcing the law. *See id.* Nevertheless, the district court and Eighth Circuit in this case determined that Minnesota's forfeiture scheme was not a "fine" in part because the scheme's "primary purpose is to compensate the government for lost revenues due to the non-payment of taxes." Pet.App.41a-42a. To remind the Court, the actual amount of property taxes unpaid here is \$2,311. Adding penalties, interest, and collection costs to the unpaid taxes brought the total aggregate amount to \$15,000. Tyler's property was seized and sold for \$40,000 to compensate the government for a \$15,000 loss. The primary purpose of this scheme is compensation? Of course not. This is not a fine "proportioned to the wrong." *Browning-Ferris*, 492 U.S. at 271.

Timbs is particularly instructive here. The petitioner there had pled guilty and received a sentence requiring him to pay a total of \$1,203. 139 S. Ct. at 686. The state intended to keep the \$42,000 Land Rover SUV it had confiscated from the petitioner at the time of his arrest. *Id.* The Indiana Supreme Court held that the Excessive Fines Clause did not apply to the state action, but this Court reversed. *Id.* In the present case, Tyler's home was seized and sold at auction for \$40,000 to compensate the government for a \$15,000 debt it was owed that included \$2,311 in unpaid taxes, plus penalties, interest, and collection costs.

The inflation from \$15,000 to fully compensate the government to \$40,000 is the tell. This \$25,000

additional assessment may only be categorized as a fine or sanction to punish Tyler. Indeed, this is clearly a fine and punitive sanction assessed against Tyler as retribution for her unpaid taxes and to deter other homeowners from failing to pay their property taxes. No other explanation or label will suffice. And no “interpretative jiggery-pokery” can account for the \$25,000 extracted from Tyler over and above what she owed the government, other than to call it a fine. See *King v. Burrell*, 576 U.S. 473, 506 (2015) (Scalia, J., dissenting). The Court held in *Timbs* that a civil sanction “at least partially punitive” is subject to scrutiny under the Excessive Fines Clause of the Eighth Amendment. 139 S. Ct. at 690. And the Excessive Fines Clause “limits the government’s power to extract payments . . . as *punishment* for some offense.” *Austin v. United States*, 509 U.S. 602, 609-610 (1993) (cleaned up).

The Excessive Fines Clause is plainly applicable here, because the government extracted sale proceeds that are partially punitive to punish Tyler and are thus a fine within the meaning of the Eighth Amendment. And the exorbitant \$25,000 fine extracted from Tyler over and above the \$15,000 to fully compensate the government violates the Eighth Amendment

CONCLUSION

For the foregoing reasons, the decision of the Eighth Circuit should be reversed.

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Respectfully submitted,

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